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REMARKS

In the Office Action, the Examiner rejected the claims under 35 USC §102 and 35 USC §103. The claims have been amended to correct typographical errors and to further clarify the subject matter regarded as the invention. New claim 35 has been added. Claims 1-35 are now pending. The rejections are fully traversed below.

Reconsideration of the application is respectfully requested based on the following remarks.

REJECTION OF CLAIMS UNDER 35 USC §112

In the Office Action, the Examiner rejected claims 1, 32-34, 4, 6, 17, and 21 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claim 4, "ranging" is a well-known term in the art. Ranging is typically performed by cable modems during the registration process. In view of the claim amendments and remarks set forth above, Applicant respectfully requests that the Examiner withdraw the rejection of the claims under 35 U.S.C. 112.

REJECTION OF CLAIMS UNDER 35 USC §102

In the Office Action, the Examiner rejected claims 1-6, 22-24, 26-27, 30-31, and 32-34 under 35 USC §102 as being anticipated by Burroughs, U.S. Pub. No. 2002/0144284 A1, ('Burroughs' hereinafter). This rejection is fully traversed below.

Burroughs discloses arranging cable modems and CMTS modules, connected to a single cable so as to provide cable modem service to a respective set of the cable modems, are arranged so one of the CMTSs can backup the other. Each of the CMTSs simultaneously broadcasts its downstream channel on its own assigned one of the cable channels that is accessible by the cable modems for which it is assigned to provide the primary downstream channel, and each cable modem is assigned in addition to its primary downstream channel at least one alternative downstream channel which is supplied by a CMTS other than its primary CMTS, so that when the primary downstream channel of a cable modem becomes invalid the cable modem switches to the alternative downstream channel. See Abstract.

It is important to note that Burroughs requires that the cable modem provide parameters to the CMTS. See page 5, paragraph 48. More particularly, Burroughs discloses the transmission of a registration request message from a cable modem to the CMTS. See page 4, paragraph 37. This process is performed when the cable modem determines that the primary downstream channel is not valid. See page 3, paragraph 32. As a result, the intelligence (e.g., switching to a downstream channel) is implemented in the cable modem rather than the CMTS. Burroughs fails to disclose or suggest communication between two different CMTSs.

With respect to claim 1, as amended, Burroughs neither discloses nor suggests receiving by a backup cable modem termination system subscriber information associated with one or more cable modems from an active cable modem termination system. Moreover, Burroughs fails to disclose or suggest prioritizing by a backup cable modem termination system the cable modems using at least one of the subscriber information or a time of receipt of the subscriber information, the prioritized cable modems subscriber information indicating an order in which

the transmission of messages between the one or more cable modems and the backup cable modem termination system is to be restored.” Similarly, Burroughs fails to disclose or suggest a backup cable modem termination system “polling the cable modems in the order indicated by the prioritized cable modems, thereby enabling the transmission of messages between the one or more cable modems and the backup cable modem termination system to be restored.”

The dependent claims depend from one of the independent claims and are therefore patentable over the cited art for at least the same reasons. However, the dependent claims recite additional limitations that further distinguish them from the cited references. Hence, it is submitted that the dependent claims are patentable over the cited art. The additional limitations recited in the independent claims or the dependent claims are not further-discussed as the above-discussed limitations are clearly sufficient to distinguish the claimed invention from the cited art. Thus, it is respectfully requested that the Examiner withdraw the rejection of the claims under 35 USC § 102.

REJECTION OF CLAIMS UNDER 35 USC §103

In the Office Action, the Examiner rejected claims 7-21, 25, and 28 under 35 USC §103 as being unpatentable over Burroughs in view of Gummalla, U.S. Patent Number 6,999,414 B2, (“Gummalla” hereinafter) This rejection is fully traversed below.

Gummalla fails to cure the deficiencies of the primary reference. Moreover, Burroughs requires that the cable modems actively switch to a backup CMTS, as well as provide parameters to their backup CMTS. As a result, Burroughs teaches away from communicating between a backup CMTS and an active CMTS. Moreover, since the cable modems actively initiate

communication with their backup CMTS, it would be unnecessary for the backup CMTS to prioritize the order in which communication with the cable modems should be established. Similarly, it would be unnecessary for the backup CMTS to poll the cable modems to establish communication. As such, Applicant respectfully submits that Burroughs teaches away from the claimed invention. Accordingly, Applicant respectfully submits that claims 7-21, 25, and 28 are patentable over the cited references.

SUMMARY

If there are any issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

Applicants hereby petition for an extension of time which may be required to maintain the pendency of this case, and any required fee for such extension or any further fee required in connection with the filing of this Amendment is to be charged to Deposit Account No. 50-0388 (Order No. CISCP251).

Respectfully submitted,

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